

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
JACK'S TOURS, INC. )  
for Extension of Motor Carrier )  
Certificate. )  
\_\_\_\_\_ )

DOCKET NO. 05-0159

ORDER NO. 22421

Filed April 26, 2006  
At 2:15 o'clock P.M.

Karen Higashi  
Chief Clerk of the Commission

2006 APR 27 A 8:56

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ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )	)	
JACK'S TOURS, INC. )	)	Docket No. 05-0159
for Extension of Motor Carrier )	)	Order No. 22421
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ORDER

By this Order, the commission denies ROBERT'S TOURS & TRANSPORTATION, INC.'s ("Robert's") Motion for Reconsideration of Order No. 22301 ("Motion for Reconsideration"), filed on March 13, 2006, in the matter of the application of JACK'S TOURS, INC. ("Jack's") for an extension of its motor carrier certificate to include the islands of Kauai, Oahu and Maui in the 1-to-7, 8-to-25, and over-25 passenger classifications ("Application").<sup>1</sup>

I.

Background

By Order No. 22301, filed on February 28, 2006, the commission denied motions to intervene filed by Robert's and seven

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<sup>1</sup>By Application filed on June 27, 2005, and amended on July 7, 2005, July 18, 2005, and July 28, 2005, Jack's requested approval from the commission to expand its motor carrier authority to include the islands of Kauai, Oahu and Maui in the 1-to-7, 8-to-25, and over-25 passenger classifications. Jack's currently holds motor carrier authority to operate on the island of Hawaii, excluding Waipio Valley, in the 1-to-7, 8-to-25 and over-25 passenger classifications.

(7) other motor carriers<sup>2</sup> on the grounds that the allegations set forth by the movants were not "reasonably pertinent to the resolution of the Application"; that intervention by any or all of the movants "would unreasonably broaden the issues already presented"; that notwithstanding that Jack's proposed service may be in competition with any of the movants' current motor carrier service, it does not necessarily follow that their business interest will suffer from Jack's proposed expansion; that movants had other means by which to protect their market share; and that movants' participation as intervenors "is only likely to delay the proceeding and will not assist the commission in developing a sound record."<sup>3</sup>

On March 13, 2006, Robert's filed a Motion for Reconsideration of Order No. 22301 in which it argued that the commission was "unreasonable" in denying its motion to intervene given the "depth" and "breadth of the number of [potential] intervenors in this docket" and given the commission's failure to "address the issues of driver shortages, loss of revenue to existing carriers, the financial ability of Jack's, the regular versus irregular route issue, and on a larger scale, whether the granting of Jack's application is consistent with HRS § 271-1."<sup>4</sup>

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<sup>2</sup>The commission also denied motions to intervene filed by PHT, Inc., Akina Aloha Tours, Inc., Akina Bus Service, Ltd., Kauai Island Tours, Inc., E Noa Corporation, V.I.P. Transportation, Inc., and Polynesian Adventure Tours, Inc.

<sup>3</sup>Order No. 22301, at 18-19.

<sup>4</sup>Motion for Reconsideration, at 2-3.

On March 28, 2006, Jack's filed a response to Robert's Motion for Reconsideration ("Response").<sup>5</sup> In its Response, Jack's asserts that Robert's "does not offer a single supportable reason, concrete explanation, or legal precedent that establishes for this commission, that its determinations made in Order No. 22301 are unreasonable, as a matter of law" and that the commission should deny Robert's Motion for Reconsideration.<sup>6</sup>

## II.

### Discussion

The standard for granting a motion for reconsideration is established in Hawaii Administrative Rules ("HAR") § 6-61-137, which provides in relevant part:

A motion seeking any change in a decision, order, or requirement of the commission should clearly specify whether the prayer is for reconsideration, rehearing, further hearing, or modification, suspension, vacation, or a combination thereof. The motion shall . . . set[] forth specifically the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous.

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<sup>5</sup>On March 17, 2006, Jack's filed a Motion for Leave to File Reply to Robert's Tours & Transportation, Inc.'s Motion for Reconsideration of Order No. 22301 Filed March 13, 2006, in which Jack's sought leave to file a reply to Robert's Motion for Reconsideration.

By letter dated March 21, 2006, the commission granted Jack's motion for leave to file a response to Robert's Motion for Reconsideration within seven (7) days of the date of the commission's letter, i.e., not later than March 28, 2006.

<sup>6</sup>Jack's Response, at 5.

HAR § 6-61-137. Thus, to succeed on a motion for reconsideration, the movant must demonstrate that the commission's decision or order was "unreasonable, unlawful, or erroneous." See id.

"[T]he purpose of a motion for reconsideration is to allow the parties to present new evidence and/or arguments that could not have been presented during the earlier adjudicated motion." Tagupa v. Tagupa, 108 Hawai'i 459, 465, 121 P.2d 924, 930 (2005). "Reconsideration is not a device to relitigate old matters or to raise arguments or evidence that could and should have been brought during the earlier proceeding." Id. (citing Association of Apartment Owners of Wailea Elua v. Wailea Resort Co., Ltd., 100 Hawai'i 97, 110, 58 P.3d 608, 621 (2002) and quoting Sousaris v. Miller, 92 Hawai'i 505, 513, 993 P.2d 539, 547 (2000)).

In seeking reconsideration, Robert's asserts that Order No. 22301 is "unreasonable."<sup>7</sup> In support of this assertion, Robert's argues that the sheer number of movants that attempted to intervene in the instant docket is in and of itself an indication that the commission's decision is unreasonable.<sup>8</sup> In doing so, Robert's distinguishes past commission denials in "numerous dockets" in which Jack's was denied intervenor status.<sup>9</sup> According to Robert's, commission denials in those instances were "mainly based on the fact that Jack's was the only intervenor in these dockets," and thus, because of the large number of

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<sup>7</sup>Motion for Reconsideration at 2.

<sup>8</sup>Id. at 3 ("The commission should reverse itself . . . solely on the depth of (sic) breadth of the number of intervenors in this docket.").

<sup>9</sup>Id. at 2.

intervenors in the instant case, the commission should reconsider its denial of intervention status to Robert's.<sup>10</sup>

The number of potential intervenors, however, is not necessarily a consideration or dispositive in determining whether intervention is appropriate. The standard for intervention is governed by HAR § 6-61-55, and it does not reference the number of intervenors as a factor in determining whether to grant a motion to intervene.

Even if the number of potential intervenors was a factor, the commission has broad discretion to determine whether intervention is appropriate. As noted in Order No. 22301, intervention as a party in a commission proceeding "is not a matter of right but is a matter resting within the sound discretion of the commission." See In re Application of Hawaiian Elec. Co., Ltd., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975).

Robert's also argues that it was "unreasonable for the commission to not address the issues of driver shortages, loss of revenue to existing carriers, the financial ability of Jack's, the regular versus irregular route issue, and on a larger scale, whether the granting of Jack's application is consistent with HRS § 271-1."<sup>11</sup> Specifically, Robert's argues that "attempts to retain

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<sup>10</sup>Id. at 2-3.

<sup>11</sup>HRS § 271-1 states:

The legislature of this State recognizes and declares that the transportation of persons and of property, for commercial purposes, over the public highways of this State constitutes a business affected with the public interest. It is intended by this chapter to provide for fair and impartial

market share by competitive pricing may lead to destructive competitive pricing which in the long run will not foster sound economic conditions in the transportation industry, especially in these times of high driver wages, fuel costs, insurance costs, and health benefits."<sup>12</sup>

The commission, however, by denying the motions to intervene, is not precluded from considering the issues asserted by Robert's and the other movants. Indeed, these policy arguments have been argued on numerous occasions to the commission, and the commission is well-versed in the intricacies of the issues, and has considered these factors in reviewing motor carrier applications. The consideration given to these issues, however, varies depending on many factors, including the size of the carrier and the extent of the authority sought, which the commission in its discretion weighs given the circumstances. Also considered are factors such

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regulation of such transportation in the interest of preserving for the public the full benefit and use of the highways consistent with the public safety and the needs of commerce; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers, to encourage the establishment and maintenance of reasonable rates and charges for transportation and related accessorial service, without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices. This chapter shall be administered and enforced with a view to carrying out the above declaration of policy.

HRS § 271-1.

<sup>12</sup>Motion for Reconsideration, at 4.

as competition and the avoidance of monopolistic operations, as noted in Order No. 22301.

Upon careful consideration, the commission finds nothing in Robert's Motion for Reconsideration that merits reconsideration of Order No. 22301. The arguments made by Robert's are a rehash of arguments it made below. Robert's, moreover, has not met its burden of showing that the commission's decision is unreasonable, unlawful, or erroneous. We, thus, conclude that the Motion for Reconsideration should be denied.

III.

Order

THE COMMISSION ORDERS:

1. Robert's Motion for Reconsideration of Order No. 22301 is denied.

DONE at Honolulu, Hawaii APR 26 2006.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By Carlito P. Caliboso  
Carlito P. Caliboso, Chairman

By (EXCUSED)  
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

By Janet E. Kawelo  
Janet E. Kawelo, Commissioner

Benedyne S. Stone  
Benedyne S. Stone  
Commission Counsel

05-0159.ah



CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22421 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: APR 26 2006